

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA**

**OATHER DALE ADAY,**

**Plaintiff,**

**vs.**

**RITE-A-WAY INDUSTRIES, INC.  
d/b/a FIRST INTERSTATE INN, and  
DOUBLE R FLOORING, INC.,**

**Defendants.**

**8:05CV347**

**SCHEDULING ORDER**

Defendant, Double R Flooring, Inc., has requested that trial be held in North Platte. *See* Filing 11. The other parties have requested that trial be held in Omaha and, apparently, the plaintiff objects to holding the trial in North Platte. *See* Filing 13.

**IT IS ORDERED** that all parties are given until the close of business on November 2, 2005, to file affidavits in accordance with NECivR 40.1(b)<sup>1</sup> as to their choice of venue.

**DATED October 18, 2005.**

**BY THE COURT:**

**s/ F.A. Gossett  
United States Magistrate Judge**

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<sup>1</sup>NECivR 40.1 provides:

**(b) Requests for Place of Trial.** The plaintiff at the time of filing a complaint in a civil action or the removing party at the time of filing a petition for removal shall make written request for trial of the case at Omaha, Lincoln, or North Platte. Each defendant or third-party defendant at the time of filing that defendant's first pleading in a civil action, or the plaintiff in a removed action within ten (10) days after service of the notice of removal, may file a written Nebraska Civil Rules request for trial at Omaha, Lincoln, or North Platte. If the request is for a place different from that requested by the plaintiff, third-party plaintiff, or removing party, it must be accompanied by a supporting affidavit.

(1) Form of Request. The request for place of trial may be a separate pleading or may be endorsed upon the complaint or other initial pleading, and shall be served upon each party.

(2) Conflicting Requests. The judge may resolve conflicting requests without oral argument. Except for cases governed by the special rules for the Nebraska docket and for the death penalty, see NEGenR 1.4(a)(5) and (6), the judge shall consider the convenience of the litigants, witnesses, and counsel when deciding the place of trial.

(3) Amended Request. A party may amend an initial or opposing request for place of trial at any time during the pendency of the action if material circumstances bearing on the proper place of trial change.